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Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

BITE, INC., a Virginia corporation,

Petitioner,

v.

FIRST NATIONAL BANK, a California corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEALS, FOURTH APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

ROBERT L. RENTTO
PROFESSIONAL LAW CORPORATION
110 West "C" Street, Suite 1503
San Diego, CA 92101
(619) 238-1002

Attorney for Petitioner

165768

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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QUESTION PRESENTED

This Court has given priority to payment out of the proceeds of a federal government contract to the subcontractors, laborers and materialmen on that contract, and to any subrogee of their rights such as a bonding company under a Miller Act bond, if any, ahead of the general contractor or prime contractor, or an assignee or secured party bank of the prime contractor, since *Prairie State Bank v. U.S.*, 164 U.S. 227 (1896) and the relevant cases thereafter cited by this Court in *Dept. of Army v. Blue Fox, Inc.*, 525 U.S. 255, 264-265 (1999). This Court and every other court that has considered the issue has followed this Court in affirming that priority. The California Court of Appeal in this case did not.

The question presented is whether the California Court of Appeal committed error in giving priority to the bank which was the assignee and secured party of the general contractor or prime contractor to payment out of the proceeds of the federal government contract over the claim of petitioner, a subcontractor, laborer and materialman on that federal government project.

STATEMENT PURSUANT TO RULE 29.6

Petitioner has no parent or publicly held company which owns 10% or more of petitioner's stock.

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The judgment of the Court of Appeal of California, Fourth Appellate District, was entered on September 22, 2000. (Appendix A) The Court of Appeal denied a timely petition for rehearing on October 18, 2000. (Appendix C) On December 13, 2000, the Supreme Court of California denied a petition for review.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Petitioner BITE, INC. provided labor and materials to the U.S. Air Force pursuant to a subcontract which it had with SYSTEMS EXPLORATION, INC. ("SEI") which was a subcontract of a prime contract (the "Prime Contract") which SEI had with the U.S. Air Force. BITE has completed its work on that contract and is still owed at least $114,793.22.

Respondent FIRST NATIONAL BANK is a secured creditor of SEI having an assignment of and perfected security interest in the proceeds of all of its contracts including the Prime Contract.

BITE discovered that the BANK was holding approximately $255,000 in proceeds from the Prime Contract in an account identified as, among others, the "Set Aside Account" and the "Subcontractor Account." BITE made demand on the BANK for payment of its claim out of the Subcontractor Account or Set Aside Account.

At the same time, David Miller, the Administrative Contracting Officer for the Defense Contract Management Command charged with administering the Prime Contract, also made demand on the BANK for the unpaid subcontractors, laborers and materialmen on the Prime Contract to be paid ahead of the BANK out of the proceeds of the Prime Contract.

The BANK rejected those demands, and took the proceeds of the Prime Contract and paid them to itself. BITE sued to recover enough of the proceeds of the Prime Contract to pay its claim as an unpaid subcontractor, laborer and materialman on the Prime Contract. We advised the trial court of petitioner's priority under federal law. The trial court granted summary judgment in favor of the BANK. The California Court of Appeal affirmed that summary judgment and the California Supreme Court denied review.

REASONS FOR GRANTING THE WRIT

I. THIS COURT HAS RECOGNIZED THE EQUITABLE PRIORITY OF SUBCONTRACTORS, LABORERS AND MATERIALMEN FIRST TO BE PAID OUT OF THE PROCEEDS OF THE GOVERNMENT CONTRACT FOR OVER 100 YEARS. WHILE THE FEDERAL GOVERNMENT IS NOT LIABLE TO THEM, IT DOES HAVE THE EQUITABLE DUTY TO SEE THAT THEY ARE FIRST PAID OUT OF THOSE PROCEEDS.

This Court from *Prairie State Bank v. United States*, 164 U.S. 227 (1896) through *Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255 (1999) has recognized the equitable priority which subcontractors, laborers and materialmen who work on a federal government project have to be paid first out of the proceeds of that government contract.

This right has uniformly been recognized, whether in the hands of the subcontractors, laborers and materialmen or a surety which has paid their claims under a Miller Act bond, for instance, and is thus subrogated to their rights to priority in payment from the proceeds of the government contract ahead of the prime contractor and his creditors, most commonly his lender bank with an assignment of or perfected security interest in the prime contractor's right to the proceeds of the government contract.

The Court of Appeal in this case reached a contrary conclusion, holding that the BANK, the prime contractor's lender bank and its assignee and secured party, took priority in the proceeds of the government contract over BITE, INC., a subcontractor, laborer and materialman who provided services and materials under the government contract.

Those cases find a corresponding duty on the part of the federal government to protect this priority of the subcontractors, laborers and materialmen on a government project. The BANK in this case frustrated the efforts of the government contracting officer to perform his duty and protect this equitable priority, and instead took the proceeds which had been produced by the work of the subcontractors, laborers and materialmen to repay the prime contractor's debts to the BANK.

Let us first note that there was no Miller Act bond on this project. We thus focus on this alternate case law which has more commonly been used by sureties on government projects after they have paid the unpaid subcontractors, laborers and materialmen whose rights they then assert as subrogees.

Let us review the line of cases discussing this equitable priority of the subcontractors, laborers and materialmen on a government project first to payment out of the proceeds of the government contract.

These cases also establish the lesser principal that, while sovereign immunity keeps the federal government from being liable to the subcontractors, laborers and materialmen, the federal government has the equitable duty to see that they are first paid out of these proceeds.

A. *Prairie State National Bank of Chicago v. U.S.*, 164 U.S. 227 (1896)

This involved Charles Sundberg & Co., a general contractor under a contract "to erect a custom house at Galveston, Tex.," 164 U.S. at 228. Sundberg assigned the final payment to be made to it by the government to a Van Zandt on behalf of Prairie Bank, but Sundberg defaulted and Hitchcock, its surety, completed the prime contract. Both the bank and Hitchcock sought the remaining $11,850 due under the prime contract. This Court noted that Hitchcock had completed the contract and paid Sundberg's bills to complete the contract, which the United States would otherwise have had to do, and held that Hitchcock was entitled to the fund holding that:

> Sundberg & Company could not transfer to the bank any greater rights in the fund than they themselves possessed. Their rights were subordinate to those of the United States and the sureties.

164 U.S. at 240.

B. *Henningsen v. United States Fidelity and Guaranty Co.*, 208 U.S. 404 (1908)

Henningsen was the general contractor "for the construction of certain buildings at Fort Lawton." 208 U.S. at 404 He assigned the payments due to him from the government under the prime contract "to R.R. Spencer, in trust for National Bank of Commerce of Seattle to secure payment of the loan made by the bank to [him]. . . ." 208 U.S. at 405.

U.S.F. & G. filed suit to obtain the remaining $13,066 from the government. This Court noted that Henningsen:

> did not make this payment [to his laborers and materialmen], and the Guaranty Company, as surety, was compelled to and did make the payment. Is its equity superior to that of one who simply loaned money to the contractor . . .? We think it is. It paid the laborers and materialmen, and thus released the contractor from his obligations to them, and to the same extent released the Government from all equitable obligations to see that the laborers and supply men were paid.

208 U.S. at 410.

C. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132 (1962)

Here the government turned the final $87,737.35 due under the prime contract over to Pearlman, the bankruptcy trustee for Dutcher Construction Corp., the defaulting general contractor. Reliance Ins. Co., the surety which "had been

compelled to pay about $350,000 to discharge debts of the contractor for labor and materials" since "[Dutcher had not] carried out its obligation to pay its laborers and materialmen," 371 U.S. at 134, sued to have the $87,737.35 turned over to it.

This Court, after holding that neither the Miller Act nor its opinion in *United States v. Munsey Trust Co.*, 332 U.S. 234 (1947) had overruled this equitable priority, held:

> that the Government had a right to use the retained fund to pay laborers and materialmen; that the laborers and materialmen had a right to be paid out of the fund; that the contractor, had he completed his job and paid his laborers and materialmen, would have become entitled to the fund and that the surety, having paid the laborers and materialmen, is entitled to the benefit of all of these rights . . .

371 U.S. at 141.

D. *National Surety Corp. v. U.S.*, 133 F. Supp. 381 (Ct. Cl. 1955)

The court first notes:

> These cases involve contests between surety companies on a defaulting contractor's payment bonds and a bank which sues under an assignment of the monies due on the contracts given by the contractor to secure loans by the bank.

133 F. Supp. at 382.

The court goes on to note from *Munsey Trust* the statement of this Court that:

> "we have recognized the peculiarly equitable claim of those responsible for the physical completion of building contracts to be paid from available monies ahead of others whose claims come from the advance of money."

and states:

> We reiterate our former opinion that the equity of the surety company is superior to the rights of the bank acquired under an assignment . . .
>
> [T]he United States is under no legal liability to pay laborers and materialmen; but it is under an equitable obligation to do so . . .
>
> Under such bond the surety guarantees payment of laborers and materialmen, and upon performances of this obligation, it relieves the Unites States from its equitable obligation to see that the laborers and materialmen are paid. For this reason it is subrogated to the right of the United States to apply this money to the payment of laborers and materialmen, in the discharge of its equitable obligation, although the United States was under no legal liability to do so. Since the right of the United States to so use the money is superior to the bank's rights as the contractor's assignee, the right of surety who pays them is superior to the bank's right.

> There would seem to be no doubt of the right of the United States to use the contractor's money in its hands to discharge the contractor's obligation to laborers and materialmen. One of the obligations assumed by the contractor under his contract with the United States was to pay laborers and materialmen. If he fails to do so, the United States has the right to use money due to him to do what he agreed to do. It would be inequitable for the United States to retain the benefits of what the laborers and materialmen had done for it and pay to someone else money which the contractor should have paid to them. See Henningsen v. United States Fidelity & Guaranty Co., supra.
>
> Since the United States is under an equitable obligation to see that laborers and materialmen are paid as held in the Henningsen case, supra, the laborers and materialmen have the equitable right to assert a claim to monies in the hands of the [U.S.] which are due to the contractor. When the surety pays the laborers and materialmen, it becomes subrogated to their right to assert an equitable claim to the monies in the hands of the [U.S.]. It has frequently been held that they have equitable priority to these moneys over the general creditors of the contractor and over his assignees [citations].

133 F. Supp. at 383-384.

This opinion was followed and quoted extensively in *In Re Dutcher Construction Corp.*, 378 F.2d 866 (2d Cir. 1967) including:

> "Since the United States is under an equitable obligation to see that laborers and materialmen are paid, as held in the *Henningsen* case . . . the laborers and materialmen have the equitable right to assert a claim to moneys in the hands of the [government] which are due to the contractor."

378 F.2d at 869.

E. *United States Fidelity & Guaranty Company v. Ernest Construction Company*, 854 F. Supp. 1545 (M.D. Fla. 1994)

This case takes the next step. The surety company got the funds from the government but Ernest Construction, the subcontractor and materialman, let the one year statute of limitations expire on its Miller Act claim, so it asserted this equitable right to proceeds of the government contract in the hands of the surety. The court first noted that:

> the court of claims has repeatedly . . . acknowledged such a right by a *subcontractor* . . .
>
> The approach adopted by this Court today establishes a materialmen's priority to funds claimed either by the government or a performing surety. In summary, the Court recognizes that although a surety's legal obligation to pay pursuant to the bond may lapse upon the expiration of the statute of limitations, as USF&G

> contends here, the *equitable* obligation continues even though USF&G has no *legal* duty to do so . . . *Munsey* – as applied by the court of claims in *National Surety* – does permit a materialman to assert an equitable lien against the holder of monies or benefit, including the government.

854 F. Supp 1560-1561.

The court went on to uphold the equitable priority of the subcontractor and materialman to the proceeds of the prime contract and to grant summary judgment for Ernest Construction on its constructive trust cause of action, reserving for trial the conversion and resulting trust cause of action alleged by Ernest Construction. Our complaint was patterned on this case.

F. *Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255 (1999) and *Blue Fox, Inc. v. Small Business Administration*, 121 F.3d 1357 (9th Cir. 1997)

These cases note the continuing of vitality of this equitable priority of the subcontractors, laborers and materialmen to the proceeds of the government contractor ahead of the secured creditor of the general contractor/ assignee of the proceeds of the prime contract.

This Court, after noting the *Prairie State Bank*, *Henningsen*, *Pearlman* and *Munsey Trust* cases, held that these cases do not override sovereign immunity and,

> Instead, these cases dealt with disputes between private parties [here the BANK and BITE] over

> priority to funds which had been transferred out of the Treasury and as to which the Government had disclaimed any ownership.

525 U.S. at 265. That is precisely our case.

These cases hold that the surety is equitably subrogated to the rights of the subcontractors, laborers and materialmen and thus has priority over the prime contractor's bank, and that the subcontractors, laborers and materialmen as the holders of those equitable rights have priority over the prime contractor's bank.

And we again note the lesser theme, that the federal government, while it is not liable to pay the subcontractors, laborers and materialmen, has the equitable duty to see that they are first paid out of the proceeds of the government contract.

II. THE PRIME CONTRACTOR HAS NO RIGHTS IN THESE PROCEEDS WHICH ARE EARMARKED FOR THE SUBCONTRACTORS, LABORERS AND MATERIALMEN UNLESS AND UNTIL HE PAYS THEM. THUS HE CANNOT CREATE ANY RIGHTS TO THOSE FUNDS IN HIS ASSIGNEE BANK BECAUSE HE HAS NO SUCH RIGHTS. AND § 9203(1)(c) OF THE COMMERCIAL CODE PROVIDES THAT HE CANNOT CREATE A SECURITY INTEREST IN THOSE PROCEEDS UNTIL HE HAS RIGHTS IN THOSE PROCEEDS.

The California Court of Appeal ruled against this 100-years of precedent on the theory that the BANK's security interest was created before the Prime Contract. That ignores

the fact that the prime contractor has no rights in the proceeds of the Prime Contract earmarked for the subcontractors, laborers and materialmen until he pays them.

Thus, because an assignor can only assign what he has, and specifically because § 9203(1)(a) of the Commercial Code provides that a debtor cannot create a security interest until he has rights in the collateral, the California Court of Appeal should have followed this 100 years of precedent and protected the rights of the subcontractors, laborers and materialmen first to be paid out of the proceeds of the federal government contract on which they work.

We invite the Court's attention to *United States v. TAC Construction Co. Inc.*, 760 F. Supp. 590, 593-596 (S.D. Miss. 1991) which is a post-UCC case involving a bank which had an assignment from the prime contractor (as the BANK had here) and also a bank which held a security interest in all of the prime contractor's contract rights (as the BANK here also claims).

A. The Contractor – TAC

> TAC's claim against the interpled funds cannot be superior to the subcontractors and suppliers because it has not paid them. In *Pearlman v. Reliance Insurance Company*, 371 U.S. 132, 83 S.Ct. 232, 9 L.Ed.2d 190 (1962), the court noted that "the contractor, had he completed his job and paid his laborers and materialmen, would have become entitled to the [contract retainage] fund . . ." *Pearlman*, 371 U.S. at 141, 83 S.Ct. at 237. 769 F. Supp. at 593.

C. The Assignee Banks – First National and DGNB

First National [the assignee bank] claims that its interest in the funds has priority over everyone else's claim because TAC assigned to First National its interest in the contract to cover the loans made to TAC on the construction project. DGNB's [the secured party bank] claim arises from the security instrument executed by TAC granting DGNB a security interest in all of TAC's contract rights.

In *Active Fire Sprinkler Corp. v. United States Postal Service*, 811 F.2d 747 (Second Circuit 1987) the court pointed out that: "it is elementary that an assignee generally takes the right subject to any claim superior to that right [citations] . . ."

As to the effect of an assignment, the Mississippi Supreme Court has stated that "[i]t is elementary that the assignee obtains no greater right in the thing assigned than was possessed by the assignor. . . ." [citation]

Consequently, the banks have only the right TAC had to the retainage fund which is not superior to the subcontractors' rights.

760 F. Supp at 594.

That court went on to note:

It is clear that the cases involving sureties claiming priority over assignees apply equally as well to the present case. In *Active Fire Sprinkler Corp.*, the court noted that:

Simply put, the equitable rights of sureties derive from the equitable rights of the clients protected by the bond – in this case the subcontractors. In *Henningsen*, the Supreme Court stated that the government has an equitable obligation to ensure the payment of laborers and suppliers on government construction projects. [citations]. *Pearlman* states that laborers have the right to be paid out of an unpaid contract balance when an insolvent general contractor fails to pay them. [citations] In both cases, the sureties, who had compensated the unpaid laborers and suppliers, had claims to the unpaid contract balances superior to the claims of bankruptcy estates and creditors. The sureties' claims arose because the sureties were subrogated to the rights of the suppliers and laborers. [citations] *Any rights held by the sureties were founded upon the rights of the unpaid laborers and suppliers* [citations].

The Fifth Circuit was presented with the same controversy in *Maryland Casualty Co. v. Delaney Lumber Co.*, 23 F. 2d 378 (Fifth Circuit 1928) .... The assignee bank claimed that "its equity [was] superior to that of the surety." [citation] In ruling that the surety's claim was superior to the assignee's claim, the court held that:

the bank did not become entitled, under either assignment, to any funds except such as were payable to the contractor. *Labor and material claims were superior to any claim held by the bank* ... The [assignee bank] could acquire no higher rights than the contractor had .... Therefore, the

> subcontractors and suppliers of materials which were used in this construction project have the highest priority of all the claimants.

760 F. Supp. at 595-596.

Another court has summarized this as follows:

> Read in unison, *Prairie State*, *Henningsen*, *Munsey Trust* and *Pearlman* yield the following priority ranking for entitlement to proceeds of government construction contracts:
>
> 1. the federal government exercising a right of offset;
>
> 2. unpaid subcontractors and sureties who have either paid subcontractors pursuant to a payment bond or completed the contract pursuant to a performance bond;
>
> 3. assignees of the general contractor including secured creditors; and
>
> 4. the general contractor or [his] bankruptcy trustee.

In re Pyramid Industries, Inc., 170 Bankruptcy Reporter 974, 980 (Bkcy. N.D. Illinois 1994).

Section 1103 of the UCC provides.

> Unless displaced by the particular provisions of this code, the principles of law and equity, *including* [emphasis added] . . . shall supplement its provisions.

The UCC does not expressly deal with this issue so it is not "displaced by [a] particular" provision of the UCC.

The court in *National Shawmut Bank of Boston v. New Amsterdam Casualty Co.*, 411 F.2d 843, 844-849 (1st Cir. 1969) analyzes that to determine:

> to what extent, if any, does the doctrine of [equitable] subrogation survive the passage of Article 9 of the UCC?

411 F.2d at 844.

That court in its analysis under Section 1103 noted the holding of the Massachusetts Supreme Judicial Court that:

> "No provision of the Code (UCC) purports to affect the fundamental equitable doctrine of subrogation." [citations] [and the First Circuit was not persuaded] that the Massachusetts court would take any different view here of the non-displacement of equitable subrogation by the Code.

411 F.2d at 847

After reviewing, among others, *Prairie State Bank*, *Henningsen*, *Pearlman* and *Munsey Trust*, that court concluded:

> It may well be . . . that to subject sureties to the filing requirements of the Code would improve and rationalize the system of financing public

> contracts. But equitable subrogation is too hardy a plant to be uprooted by a Code which speaks around but not to the issue.

411 F.2d at 849.

We also invite the Court's attention to *First Alabama Bank of Birmingham v. Hartford Accident and Indemnity Co., Inc.*, 430 F. Supp. 907 (N.D. Alabama S.D. 1977). The prime contractor there had assigned the proceeds of his contracts to his lender bank, which security interest was perfected in accordance with the Alabama UCC. When the prime contractor went into default, his surety paid the unpaid subcontractors and suppliers of the prime contractor. 430 F. Supp. at 908

The bank in that case argued that its compliance with the UCC entitled it to priority over the surety who had paid the subcontractors and suppliers. That court disagreed.

> This contention has been uniformly rejected by all courts which have considered the question. The Uniform Commercial Code protects only "contract rights," not those that arise by operation of law, and every court which has considered the matter has held that a surety's equitable subrogation rights, upon default of its principal - contractor, arise by operation of law, not contract, and that therefore a surety is not required to file financing statements under the Uniform Commercial Code to preserve its rights to equitable subrogation in the event of its principals default [citations].

430 F. Supp. at 910.

We return to *National Shawmut Bank* where that court noted:

> Prior to default, the contractor had the right to assign progress payments and had the Bank received payment it could not . . . had been divested by the surety. But upon default, the surety which is obligated to complete the work steps into the shoes of the government – not of the contractor which on default has forfeited its rights. It is subrogated not only to the right of the government to pay laborers and materialmen from funds retained out of the progress payments [citing *Prairie State Bank*, *Henningsen* and *Pearlman*] but also the government's right to apply to the cost of completion the earned but unpaid progress payments in its hands at the time of default. [citations including *Munsey Trust*].

411 F.2d at 848.

The California Court of Appeal refused to follow this 100 years of precedent that protects the rights of subcontractors, laborers and materialmen first to be paid out of the proceeds of the federal contract.

It ignored that the prime contractor/debtor cannot assign to or create a security interest in favor of its bank unless and until it pays the subcontractors, laborers and materialmen and thus acquires rights in the prime contract proceeds.

III. HERE THE BANK RECEIVED THE BENEFITS PRODUCED BY THE SUBCONTRACTORS, LABORERS AND MATERIALMEN. THAT IS SUFFICIENT TO OVERRIDE THE BANK'S SECURITY INTEREST, PARTICULARLY AFTER THE BANK FRUSTRATED THE GOVERNMENT'S EFFORTS TO CAUSE THE SUBCONTRACTORS, LABORERS AND MATERIALMEN TO BE PAID OUT OF THESE PROCEEDS.

The BANK has taken the funds out of the Subcontractor Account or Set Aside Account which were to pay the subcontractors, laborers and materialmen for that which they contributed to complete this project, which the government now has and is using.

We return to *National Surety Corp. v. United States*, 133 F. Supp. 381, 384 (Ct. Cl. 1955):

> It would be inequitable for the United States to retain the benefits of what the laborers and materialmen had done for it and pay to some one else money which the contractor should have paid to them. See *Henningsen* . . .

133 F. Supp. at 389.

David Miller, the Administrating Contracting Officer for the federal government who was administering the Prime Contract, tried to protect the priority of the subcontractors, laborers and materialmen first to be paid out of the proceeds of the Prime Contract. The BANK frustrated his efforts, refusing to cooperate in paying those funds to the unpaid subcontractors, laborers and materialmen under the Prime Contract to be paid ahead of the BANK.

It is egregious that the BANK would have prevented Mr. Miller and the government from discharging its duty to these subcontractors, labors and materialmen. That alone should estop the BANK from retaining these funds. Section 1103 specifically provides that estoppel is not superseded by the UCC.

It would appear that either (i) the acts of the BANK in attempting to frustrate David Miller's efforts to protect the rights of the subcontractors, laborers and materialmen in these funds or (ii) that these funds were taken from that Subcontractor's Account or Set Aside Account by the BANK clearly creates an estoppel.

There was no way in which BITE could have protected itself, which perhaps is the reason for the federal case law protections for persons such as BITE.

The misperception of the California Court of Appeal is capsulized by its comment on Page 12 of its opinion that:

> BITE made no showing . . . that during performance of the subcontract BITE had any expectations of payment from the Prime Contract funds in BANK's possession.

BITE had expectation of payment from the Prime Contract funds when they were paid, long before they got into the BANK's possession and before they were deposited in the Subcontractor account or Set Aside Account.

The error of law is demonstrated by the concluding sentence of the opinion of the California Court of Appeal on page 15 that:

> [*Dept. of Army*] *v. Blue Fox* does not stand for the proposition that subcontractors in government projects have the unequivocal right to be paid ahead of secured creditors [of the prime or general contractor].

It is the cases cited by this Court in *Blue Fox*, 525 U.S. at 264-265, which are *Prairie State Bank*, *Henningsen*, *Pearlman*, and *Munsey Trust*, that do stand for that proposition.

CONCLUSION

The proceeds of a government contract are first earmarked to pay the claims of the subcontractors, laborers and materialmen who contribute to the government project. Title to those proceeds never passes to the prime contractor. His assignee/secured party bank thus never gets any rights in those proceeds because he never had any rights in those proceeds.

This Court should grant certiorari to conform this decision of the California Court of Appeal to the decisions of this Court for over 100 years, and the case law based on them, to protect the rights of subcontractors, laborers and materialmen first to be paid out of the proceeds of the government contracts on which they work.

Respectfully submitted,

ROBERT L. RENTTO
PROFESSIONAL LAW CORPORATION
110 West "C" Street, Suite 1503
San Diego, CA 92101
(619) 238-1002

Attorney for Petitioner